

Paula Goodman Maccabee, Esq.

Just Change Law Offices

1961 Selby Ave., St. Paul, Minnesota 55104, pmaccabee@justchangelaw.com

Ph: 651-646-8890, Fax: 651-646-5754, Cell 651-775-7128

<http://justchangelaw.com>

March 21, 2016

Catherine Neuschler (Catherine.Neuschler@state.mn.us)
Supervisor, Agency Rules Unit
520 Lafayette Road North
St. Paul, MN 55155-4194

RE: 2014-01247-TJH 401 Certification for U.S. Steel Corporation – Dark River Seepage Collection System

Dear Ms. Neuschler:

The comments below are submitted on behalf of WaterLegacy, a non-profit organization formed to protect Minnesota's water resources and the communities that rely on them. WaterLegacy opposes issuance by Minnesota Pollution Control Agency (MPCA) of Section 401 certification for the dredge and fill of 5.75 acres of wetlands for the Dark River Seepage Collection System for U.S. Steel's Minntac Tailings waste disposal facility.

WaterLegacy has consistently advocated that MPCA reissue a wastewater pollution control permit for the Minntac Tailings facility (NPDES/SDS Permit No. MN0052493) to require compliance with all applicable water quality standards. To the extent that pollutants that are not appropriately governed by a schedule of compliance under federal regulations, we have advocated that enforcement actions be taken to secure compliance with water quality standards. With this letter, we have attached copies of WaterLegacy's January 2, 2014 letter opposing certification of an expansion of the Minntac mine. (Exhibit 1) We have also attached our December 19, 2014 letter requesting that the proposed reissuance of the Minntac NPDES permit comply with the Clean Water Act. (Exhibit 2). Please note that no permit has been reissued.

The MPCA's draft Section 401(a)(1) certification letter proposes to certify the Dark River Seepage Collection System for U.S. Steel's Minntac Tailings disposal facility despite the following facts:

- The NPDES permit for U.S. Steel's Minntac Tailings disposal facility (NPDES/SDS Permit No. MN0052493) expired in 1992.
- The expired permit for U.S. Steel's Minntac Tailings disposal facility does not comply with the Clean Water Act or regulate all pollutants that have the reasonable potential to violate water quality standards, including but not limited to Minnesota's wild rice sulfate standard.

- The MPCA has acknowledged since at least 2010 that U.S. Steel’s Minntac Tailings disposal facility has violated even the weak and out-of-date 1988 NPDES/SDS permit by which effluent from the tailings waste facility is ostensibly controlled.
- Although the MPCA has prepared various documents related to violations of water quality standards, there is no document that requires the Minntac Tailings waste facility to comply with all water quality standards applicable to its effluent by any date certain. There is no “schedule of compliance” in place conforming to federal regulations.
- The MPCA has not found and could not find that U.S. Steel’s Minntac Tailings waste facility has complied with or will comply with all water quality standards applicable to the facility. Minn. R. 7001.1450, Subp. 1, Item B; 7001.0140, Subp. 2.

The MPCA’s draft Section 401 certification letter states, “The MPCA relies upon several regulatory programs to manage the water quality impacts of mining operations,” and “This action does not eliminate, waive or vary the applicant’s responsibility of complying with all water quality standards and requirements contained in Minn. R. 7050 and all other applicable MPCA statutes and rules regarding water quality in the construction, installation, and operation of the project.”

WaterLegacy’s concern is that neither the MPCA nor Minnesota citizens can rely on MPCA’s regulatory programs to manage the water quality impacts of mining operations.¹ A regulatory agency must take action to enforce water quality standards and requirements, not merely disclaim their waiver. Until the MPCA conducts an enforcement action or reissues an NPDES/SDS permit that requires compliance with the Clean Water Act, federal regulations and state water quality standards, we believe that no Section 401 certifications should issue for the Minntac Tailings waste facility.

Should the MPCA proceed with a Section 401 certification despite the failure of regulatory control of Minntac Tailings waste pollution, WaterLegacy believes that the certification letter should replace the above sentences on regulatory programs and waiver with a clear commitment: “MPCA is committed to take additional appropriate actions through regulatory action to ensure that applicant complies with the requirements contained in Minn. R. 7050 and all other applicable MPCA statutes and rules regarding water quality in the construction, installation, and operation of the project.”

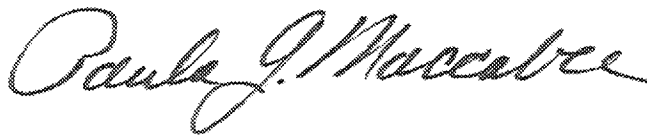
In addition, due to concerns about the impacts of Minntac Tailings facility direct and indirect discharge on sulfate concentrations and mercury methylation, WaterLegacy strongly recommends that monitoring conditions for Section 401 certification be amended as follows:

¹ See WaterLegacy Petition for Withdrawal of Program Delegation from the State of Minnesota for NPDES Permits Related to Mining Facilities, available at <http://www2.epa.gov/mn/npdes-petition-program-withdrawal-minnesota>.

- 1) Vegetative Monitoring: Wetland monitoring must be completed following the requirements of the USACE. This includes vegetative monitoring and hydrologic monitoring. Vegetative monitoring must use the Floristic Quality Assessment (FQA).
- 2) Chemistry Monitoring: Wetland monitoring must be completed to assess sulfate, mercury and methylmercury impacts to wetlands, including at least the 72.5 acres of wetlands within the 225-acre Western Seepage Collection Project area.

WaterLegacy appreciates the opportunity to comment on the MPCA's draft Section 401(a)(1) for the U.S. Steel Corporation Minntac Tailings waste facility Dark River Seepage Collection System.

Sincerely yours,



Paula Goodman Maccabee
Advocacy Director/Counsel for WaterLegacy

cc: Tinka Hyde, USEPA (Hyde.Tinka@epa.gov)
Barbara Wester, USEPA (Wester.Barbara@epa.gov)
Krista McKim, USEPA (McKim.Krista@epa.gov)

Enclosures (Exhibits 1 and 2)